

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:FS:B:TL-N-4222-01

MIRoot

date: August 2, 2001

to: Salvatore Collura (LMSB)

from: Associate Area Counsel (CC:LM:FS:HAR)

subject: [REDACTED]

EIN [REDACTED]

Taxable Years - [REDACTED]

This memorandum is in response to your request for assistance dated June 28, 2001 for assistance in the above-captioned matter. This memorandum should not be cited as precedent.

DISCUSSION

In your memorandum, you sought our review of a Consent to Extend the Time to Assess Tax (Form 872). The deficiency which may be assessed during the extended period is to be limited to that "resulting from any adjustment to interest expense including any consequential changes to other items based on such adjustment." Set forth below is brief summary of the issue in this case giving rise to the Internal Revenue Service's need for this restricted consent (Form 872).

Facts

Presently, the Internal Revenue Service is examining the tax returns for the taxable years ending December 31, [REDACTED] of [REDACTED] (or taxpayer). The only issue remaining unresolved in this examination is the taxpayer's claimed deduction for interest paid to its parent [REDACTED] a Canadian corporation.

[REDACTED] borrowed funds from [REDACTED] (which funded these loans by its own financing). The parties executed promissory notes denominated in American rather than Canadian dollars. They then entered into currency swaps using Canadian dollars. The currency swaps reduced [REDACTED]'s borrowing rate below the rate payable by [REDACTED] to [REDACTED] on the aforementioned promissory notes. [REDACTED] did not pass its interest reduction to [REDACTED]

The Internal Revenue Service is now seeking to determine whether [REDACTED]'s interest deduction should be reduced (under I.R.C. § 482) to an amount which would result from the lower interest rate charged to and paid by [REDACTED].

Any disallowance would be carried over in part to [REDACTED] because the taxpayer's interest deduction in [REDACTED] is limited by reason of I.R.C. § 163(j).

The statute of limitations on assessment and collection for [REDACTED] currently expires [REDACTED]. The taxpayer has agreed to extend this statute of limitations to [REDACTED] provided any assessment is restricted to a deficiency arising from aforementioned issue.

Issue

Whether the Consent to Extend the Time to Assess Tax (Form 872) which is limited to that "resulting from any adjustment to interest expense including any consequential changes to other items based on such adjustment" is proper in this matter. **6501.08-17.**

Analysis

The amount of any tax generally is required to be assessed within 3 years after the return was filed. I.R.C. § 6501(a). Before the expiration of this period the parties may agree in writing to assessment of tax after such time. Section 6501(c)(4)(A). This period may be further extended by subsequent agreements in writing before the expiration of the period previously agreed upon. Id.

Such agreements to extend the period of assessment may limit assessment to specific tax issues. As noted in Publication 1035 Extending the Tax Assessment Period, the Internal Revenue Service will not accept such restricted consents unless all of the following conditions exist:

- (a) The number of unresolved issues that must be covered by the restricted consent do not make it impractical to do so;
- (b) The scope of the restrictions must be clearly and accurately described for all the unresolved issues;
- (c) The issues not covered by the consent are agreed and provision is made for assessing any deficiency; and

(d) The use of a restricted consent at the district level is approved by the appropriate service representative.

These conditions are all present in this case. There is only one (1) unresolved issue covered by the restricted consent. Thus, the number of unresolved issues covered by the restricted consent do not make it impractical to do so. The specific restriction: "resulting from any adjustment to interest expense including any consequential changes to other items based on such adjustment" - is plainly and correctly stated within the consent. All issues not covered by the restricted consent are agreed and provision is made for assessing any deficiency. Finally, (we are assuming) that the appropriate Internal Revenue Service representative has approved use of the restricted consent.

Based on the foregoing, it is our opinion that the use of the restricted consent in this case is appropriate.

We are simultaneously submitting this memorandum to the National Office for post-review and any guidance they may deem appropriate. Consequently, you should not take any action based on the advice contained herein during the 10-day review period. We will inform you of any modification or suggestions, and, if necessary, we will send you a supplemental memorandum incorporating any such recommendation.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

Since there is no further action required by this office, we will close our file in this matter ten days from the issuance of this memorandum or upon our receipt of written advice from the National Office, whichever occurs later. If you have any questions regarding this matter please contact me at (716) 551-5610.

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Associate Area Counsel
LMSB, Area 1

By: _____
MATTHEW I. ROOT
Attorney